IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 620 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHEMUDABEN ALIBHAI MANSURI

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner

MR AJ DESAI, APP for Respondent No. 1

MR SR SHAH for Respondent No. 3, 4

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 19/02/2001

ORAL JUDGEMENT

1. Rule. Service of rule is waived by Shri A.J.Desai, learned APP on behalf of respondent No.1-State and Shri S.R.Shah, learned advocate on behalf of respondents No.3 and 4.

2. Mehmudaben Alibhai Mansuri, petitioner-applicant has filed this revision application under Section 397 of the Code of Criminal Procedure, 1973 (hereinafter referred to as `the Code') and challenged the order dated 7.9.99 passed by the learned Executive Magistrate, Visnagar, in Case No.1 of 1997. The learned Magistrate was pleased to discharge the said case on the ground that under Sec.145 of the Code there was no question of any breach of peace.

3. The facts giving rise to this application are as under:

3.1 There is a property situated at Visnagar being Survey No. 249, Plot No.1 of Raspark Co-operative Housing Society, Bungalow No.1 (hereinafter referred to as `the suit property'). Mehmudaben - petitioner applicant filed an application under Sec.145 of the Code before the learned Executive Magistrate, Visnagar, somewhere on 23rd June, 1999. In the said application it was stated that applicant has taken out the suit property from Bhisti Fakirmohmad Rehmanbhai for Rs.1,00,000/- and for that a registered document dated 24th February, 1995, was executed and she possessed the suit property in this behalf. However, it was alleged that somewhere on 13th June, 1995, the otherside has taken forcibly possession of the suit property.

3.2 It appears that after filing of the said complaint, the learned Magistrate initiated the proceedings and issued notice. The learned Magistrate called for the report of the Police Inspector, Visnagar on 31st July, 1997. Learned advocate for the respondents No.3 and 4 submitted written arguments showing that the case does not fall within the provisions of Sec.145 of the Code. After that the learned Magistrate considered the case and held that the case does not fall within the provisions of Sec.145 of the Code. The dispute raised by the petitioner is of a civil dispute and possession is between respondents No.3 and 4 and the learned Magistrate observed that there was no question of breach of peace and therefore the learned Magistrate has discharged the aforesaid case.

3.3 Being aggrieved and dissatisfied with the order of the learned Magistrate, the petitioner has filed this revision application before this Court.

4. Shri B.S.Patel, learned advocate for the petitioner has contended that the lower Court has

seriously erred in not considering the fact that the possession of respondents No. 3 and 4 is the result of collusion between the Police Officers and the respondents No.3 and 4. He has further submitted that the lower court has seriously erred in not considering the fact that the petitioner had been dispossessed only on the ground of breach of peace and for that a complaint against the petitioner and her husband had been registered. He has further submitted that the lower court has seriously erred in not considering the fact that the dispossession of the petitioner was the reason of the apprehension for the breach of peace.

5. Shri S.R.Shah, learned advocate for the respondents No.3 and 4 has submitted that in this case the dispute raised by the petitioner is a civil dispute. I have heard Shri A.J.Desai, learned APP in this behalf.

6. Shri S.R.Shah, learned advocate for the respondents No.3 and 4 has relied upon the judgment of the Hon'ble Supreme Court in the case of Amresh Tiwari Vs. Lalta Prasad Dubey and another reported in AIR 2000 S.C. 1504. In Para 14 on page 1508 the Hon'ble Supreme Court observed as under:

> "It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the Civil Court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the Civil Court would be binding on the Magistrate."

7. In view of the same, without adjudicating the matter on merits of the case, I am of the view that the revision raised question of civil dispute. I also agree with reasonings of the learned Judge, and the same is, therefore, not maintainable at law. Hence, this Criminal Revision Application is rejected. Rule is discharged.

(K.M. Mehta, J.)

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